



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Steve Scalise
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Scalise:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

FOIA requires all federal agencies to promulgate regulations for the collection of fees associated with responding to FOIA requests. The EPA's fee regulations are consistent with the guidance provided by the Department of Justice in its "Freedom of Information Act Guide." Under the EPA FOIA regulations, the agency charges a fee to process any FOIA request, unless the fee is waived or under a *de minimis* level. This fee relates to the direct costs the agency incurs when searching for, duplicating, and retrieving the requested records. These direct costs may include a portion of the salary of the employee performing the work and the cost of operating duplication equipment.

Upon receipt of a fee waiver request containing insufficient information on which to make a determination, the EPA's FOIA Office may send a letter to the requestor seeking information on the factors on which a decision is made. These factors will help the FOIA Office to determine whether the requestor has adequately demonstrated that the request meets the standard for a waiver of fees. Fee waiver decisions are made on a case-by-case basis, because, as stated above, the EPA is not permitted to grant fee waivers to requestors on a class basis. Fee waiver decisions are also made on a request-by-request basis: the fact that a requester received a fee waiver for one request does not mean that requester will receive a fee waiver for the next request. If an initial request for a fee waiver is denied, a requester can submit an administrative appeal to the

agency, and seek a review of the initial decision within 30 days of the denial. These appeals are then independently reviewed by staff in the Office of General Counsel, who issue a decision on the appeal.

We have reviewed the requests for fee waivers that the agency received in recent years, and determined that the agency acted appropriately. In the time period of January 1, 2012 – April 26, 2013, the EPA received 892 requests for fee waivers. Of those 892 requests, 535 were denied (approximately 60 percent) and 357 were granted (approximately 40 percent). The majority of those denied were attributed to not meeting the requirements as laid out in factors two and three, which are outlined in the enclosure. It is important to note, that for the 535 FOIA requests where a fee waiver request was denied, the EPA only collected fees for 37 of those requests. Generally, this was due to the fact that these requests ultimately did not exceed the \$14.00 *de minimis* cost threshold to process. In addition, we have determined that the median fee paid for the FOIA fees collected during this time period was \$70.85. It is also important to note that the EPA has taken the additional step of asking the agency's Inspector General to review our fee waiver policies and decisions.

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Again, thank you again for your letter. The EPA remains committed to conducting its activities with the highest legal and ethical standards and in the public interest. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

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Laura Vaught
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Joe Barton
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

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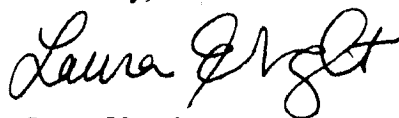
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Associate Administrator

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The Honorable Bob Gibbs
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Gibbs:

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Laura Vaught
Associate Administrator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Michael Burgess
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Burgess:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

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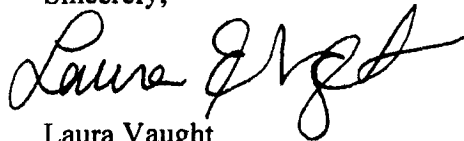
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
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The Honorable David McKinley
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman McKinley:

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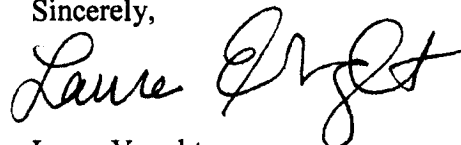
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WASHINGTON, D.C. 20460

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The Honorable Morgan Griffith
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Griffith:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

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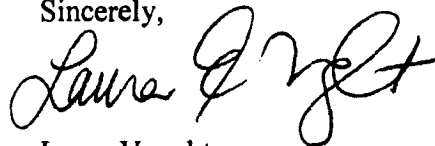
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The Honorable Todd Rokita
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Rokita:

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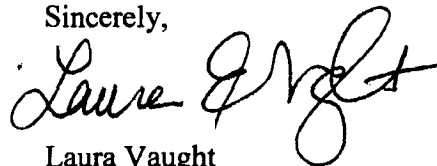
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The Honorable Jack Kingston
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Kingston:

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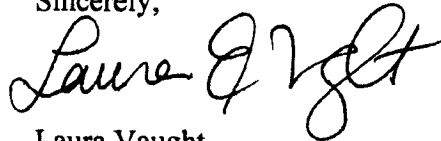
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Again, thank you again for your letter. The EPA remains committed to conducting its activities with the highest legal and ethical standards and in the public interest. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

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Laura Vaught
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Randy Weber
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Weber:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

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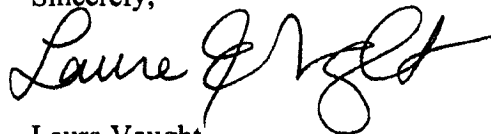
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Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Steve Pearce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Pearce:

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First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

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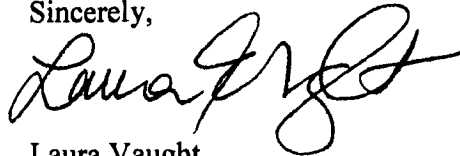
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Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Lynn Westmoreland
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Westmoreland:

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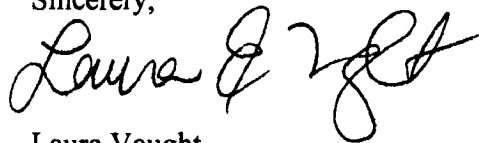
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OCT 22 2013

OFFICE OF CONGRESSIONAL
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The Honorable Marsha Blackburn
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Blackburn:

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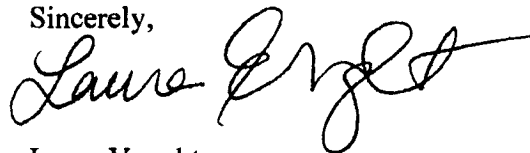
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Jeff Duncan
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Duncan:

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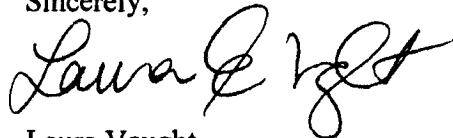
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Paul Brown
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Brown:

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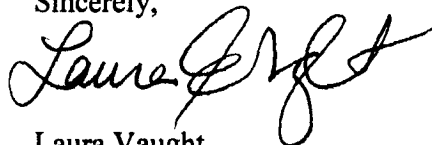
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Andy Harris
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Harris:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

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agency, and seek a review of the initial decision within 30 days of the denial. These appeals are then independently reviewed by staff in the Office of General Counsel, who issue a decision on the appeal.

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Again, thank you again for your letter. The EPA remains committed to conducting its activities with the highest legal and ethical standards and in the public interest. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

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Laura Vaught
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Cynthia Lummis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Lummis:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

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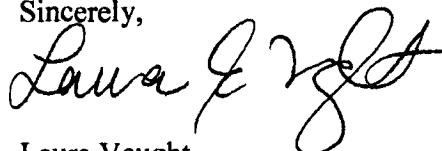
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Associate Administrator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Tim Huelskamp
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Huelskamp:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

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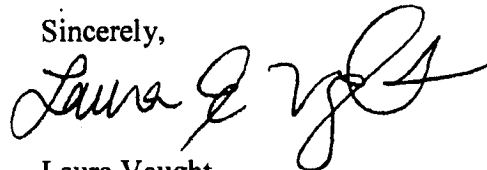
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Steve Stockman
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Stockman:

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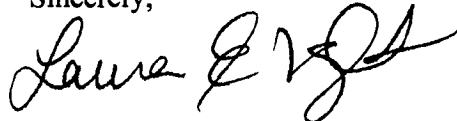
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OCT 22 2013

OFFICE OF CONGRESSIONAL
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The Honorable Steve Chabot
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Chabot:

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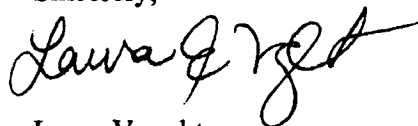
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Scott Perry
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Perry:

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Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Rob Bishop
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Bishop:

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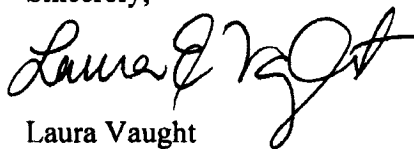
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WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Rodney Davis
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Davis:

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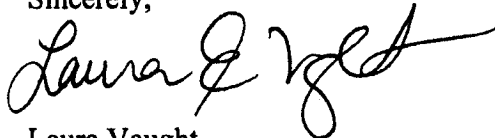
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Again, thank you again for your letter. The EPA remains committed to conducting its activities with the highest legal and ethical standards and in the public interest. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

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Laura Vaught
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Steve Sutherland
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Sutherland:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

First, and let me be clear, it is not the practice of the EPA to deny or grant fee waivers to any group or individual based on ideology. The EPA follows the established FOIA regulations which provide several factors in determining when a fee waiver can be granted. These regulations can be found at 40 C.F.R. § 2.107. We have also provided an enclosure to this letter for information regarding these factors. In addition, the EPA's regulations governing the FOIA process, including the fee waiver process, can be found on the EPA's website at <http://www.epa.gov/foia/>.

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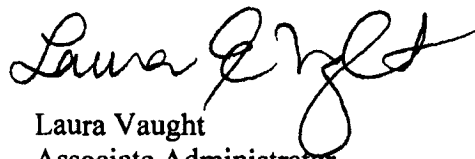
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Associate Administrator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Robert Pittenger
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Pittenger:

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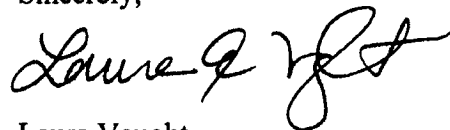
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OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Pete Olson
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Olson:

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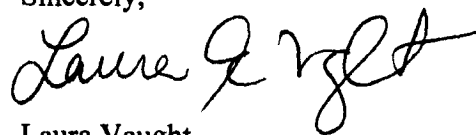
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OFFICE OF CONGRESSIONAL
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The Honorable Blake Farenthold
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Farenthold:

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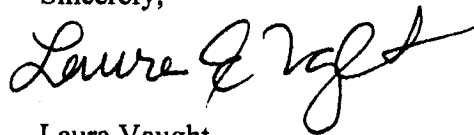
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Doc Hastings
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hastings:

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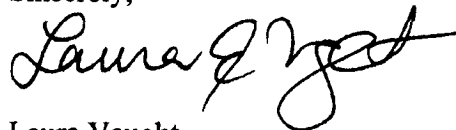
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OCT 22 2013

OFFICE OF CONGRESSIONAL
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The Honorable Trent Franks
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Franks:

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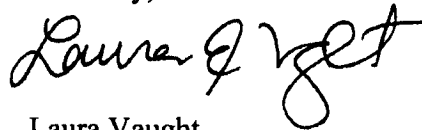
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WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Randy Hultgren
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hultgren:

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Upon receipt of a fee waiver request containing insufficient information on which to make a determination, the EPA's FOIA Office may send a letter to the requestor seeking information on the factors on which a decision is made. These factors will help the FOIA Office to determine whether the requestor has adequately demonstrated that the request meets the standard for a waiver of fees. Fee waiver decisions are made on a case-by-case basis, because, as stated above, the EPA is not permitted to grant fee waivers to requestors on a class basis. Fee waiver decisions are also made on a request-by-request basis: the fact that a requester received a fee waiver for one request does not mean that requester will receive a fee waiver for the next request. If an initial request for a fee waiver is denied, a requester can submit an administrative appeal to the

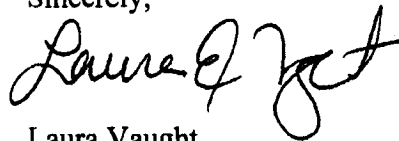
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We have reviewed the requests for fee waivers that the agency received in recent years, and determined that the agency acted appropriately. In the time period of January 1, 2012 – April 26, 2013, the EPA received 892 requests for fee waivers. Of those 892 requests, 535 were denied (approximately 60 percent) and 357 were granted (approximately 40 percent). The majority of those denied were attributed to not meeting the requirements as laid out in factors two and three, which are outlined in the enclosure. It is important to note, that for the 535 FOIA requests where a fee waiver request was denied, the EPA only collected fees for 37 of those requests. Generally, this was due to the fact that these requests ultimately did not exceed the \$14.00 *de minimis* cost threshold to process. In addition, we have determined that the median fee paid for the FOIA fees collected during this time period was \$70.85. It is also important to note that the EPA has taken the additional step of asking the agency's Inspector General to review our fee waiver policies and decisions.

With respect to Competitive Enterprise Institute (CEI), during the above-referenced time period, CEI submitted 16 fee waiver requests. Of those requests, 10 (or 64 percent) were granted, either initially or on appeal. The other six requests were denied because they did not meet the requirements laid out in factors two and three. Nevertheless, for the six CEI fee waiver requests the EPA denied, CEI did not have to pay for these FOIA requests because they did not exceed the \$14.00 threshold to process FOIA requests.

Again, thank you again for your letter. The EPA remains committed to conducting its activities with the highest legal and ethical standards and in the public interest. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

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Laura Vaught
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Fleming
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Fleming:

Thank you for your letter of June 5, 2013, regarding the Environmental Protection Agency's Freedom of Information Act (FOIA) fee waiver process. I appreciate the opportunity to respond to these issues.

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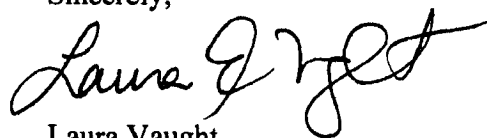
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Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Jim Renacci
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Renacci:

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Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Phil Roe
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Roe:

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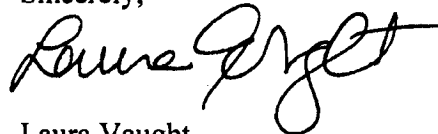
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Factors EPA Considers in FOIA Fee Waiver Determinations

The six factors that determine whether or not a fee waiver is granted or denied are as follows:

- Factor One: The subject of a request: Whether the subject of the requested records concerns, “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.
- Factor Two: The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public’s understanding.
- Factor Three: The contribution of an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding”. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requestor. A requestor’s expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.
- Factor Four: The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced significantly by the disclosure. The FOIA Office will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is “important” enough to be made public.
- Factor Five: The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure. The FOIA Office will consider any commercial interest of the requestor or of any person on whose behalf the requestor may be acting, that would be furthered by the requested

disclosure. Requestors will be given the opportunity in the administrative process to provide explanatory information regarding this consideration.

- Factor Six: The primary interest in disclosure: Whether any identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure that disclosure is “primarily in the commercial interest of the requestor”. A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The FOIA Office ordinarily will presume that when a news media requestor has satisfied the public interest standard, the public interest will be the interest primarily served by the disclosure to that requestor. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.